

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CONSORTIUM OF SERVICES  
INNOVATION A/K/A CSI,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

CASE NO. C19-0750-JCC

ORDER

This matter comes before the Court on Defendant's motion to dismiss Plaintiff's second amended complaint (Dkt. No. 32). Having thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument unnecessary and hereby GRANTS the motion for the reasons explained herein.

**I. BACKGROUND**

On October 30, 2019, the Court dismissed Plaintiff's first amended complaint, finding that the complaint and accompanying exhibits failed to establish that Defendant either directly participated in the alleged underlying conduct or was liable under an alter ego theory of liability. (*See* Dkt. No. 27 at 9–10.) The Court directed Plaintiff to file an amended complaint curing the defects identified by the Court. (*Id.* at 10.)

On November 13, 2019, Plaintiff filed a second amended complaint. (Dkt. No. 28.) The

1 Court previously set forth an extensive recitation of the factual allegations contained in  
2 Plaintiff's first amended complaint, which largely mirror those in Plaintiff's second amended  
3 complaint. (*See* Dkt. No. 27 at 1–7; *compare* Dkt. No. 20 at 3–19, *with* Dkt. No. 28 at 3–19.) The  
4 salient changes are Plaintiff's new allegations that the actions underlying its claims were  
5 undertaken by Defendant's subsidiaries, acting as Defendant agents. (*Compare* Dkt. No. 28 at 3,  
6 4–7, 9, 11, 15, *with* Dkt. No. 20).<sup>1</sup> Defendant now moves to dismiss Plaintiff's second amended  
7 complaint. (Dkt. No. 32.)

## 8 **II. DISCUSSION**

### 9 **A. Motion to Dismiss Legal Standard**

10 A defendant may move for dismissal when a plaintiff “fails to state a claim upon which  
11 relief can be granted.” Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss, a complaint must  
12 contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its  
13 face. *Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009). A claim has facial plausibility when the  
14 plaintiff pleads factual content that allows the court to draw the reasonable inference that the  
15 defendant is liable for the misconduct alleged. *Id.* at 678. The plaintiff is obligated to provide  
16 grounds for their entitlement to relief that amount to more than labels and conclusions or a  
17 formulaic recitation of the elements of a cause of action. *Bell Atl. Corp. v. Twombly*, 550 U.S.  
18 544, 545 (2007). “[T]he pleading standard Rule 8 announces does not require ‘detailed factual  
19 allegations,’ but it demands more than an unadorned, the-defendant-unlawfully-harmed-me  
20 accusation.” *Iqbal*, 556 U.S. at 678. Dismissal under Rule 12(b)(6) “can [also] be based on the

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21  
22 <sup>1</sup> In its second amended complaint, Plaintiff describes its preexisting relationship with  
23 Defendant, stating that the parties “worked together in various capacities including signing a  
24 Microsoft Academy Service Partner Agreement (the”MASP”) [sic].” (Dkt. No. 28 at 3; *see* Dkt.  
25 Nos. 28-1–28-3.) But Plaintiff acknowledges that the MASPs are not at issue in this case, (*see*  
26 Dkt. No. 28 at 3), and by their own terms the MASPs explicitly do not apply to sales of the  
goods at issue in this case or agreements between Plaintiff and third parties, (*see* Dkt. Nos. 28-1  
at 2, 4; 28-2 at 2, 4; 28-3 at 2, 4). Similarly, Plaintiff cites an agreement between Defendant and  
Certiport Inc. but does not explain the relevancy of that agreement to this case. (*See* Dkt. No. 28  
at 3) (citing Dkt. No. 28-4)

1 lack of a cognizable legal theory.” *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th  
2 Cir. 1988).

3 Although the court must accept as true a complaint’s well-pleaded facts, conclusory  
4 allegations of law and unwarranted inferences will not defeat an otherwise proper Rule 12(b)(6)  
5 motion. *Vasquez v. L.A. Cty.*, 487 F.3d 1246, 1249 (9th Cir. 2007); *Sprewell v. Golden State*  
6 *Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). Moreover, the court may consider documents  
7 attached to the complaint, *see United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003), and  
8 need not “accept as true conclusory allegations which are contradicted by documents referred to  
9 in the complaint.” *Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293, 1295–96 (9th Cir. 1998).

10 **B. Defendant as Proper Party**

11 Plaintiff has asserted several grounds it contends establish Defendant’s liability for the  
12 underlying events in this case, (*see* Dkt. No. 28 at 19–26), which Defendant argues do not  
13 establish that Defendant is a proper party to this suit, (*see* Dkt. No. 32 at 13–17). The Court  
14 examines each asserted ground in turn.

15 1. Sale of Defendant’s Goods or Services

16 Plaintiff alleges that Defendant’s subsidiaries acted as Defendant’s agents to conduct  
17 business related to Defendant’s products and services, emphasizing that Defendant’s subsidiaries  
18 do not “produce any products or services separate from those offered by Defendant and therefore  
19 are acting as agents of Defendant to further Defendant’s own business purposes.” (*Id.* at 19, 22,  
20 24.)

21 “It is a general principle of corporate law deeply ingrained in our economic and legal  
22 systems that a parent corporation (so called because of control through ownership of another  
23 corporation’s stock) is not liable for the acts of its subsidiaries.” *United States v. Bestfoods*, 524  
24 U.S. 51, 61 (1998). But a parent corporation may be liable for the acts of a subsidiary when “the  
25 parent exercise[s] total control over the subsidiary, well beyond the normal control exercised by  
26 parents over subsidiaries,” and thereby renders the subsidiary an agent of the parent.

1 *Campagnolo S.R.L. v. Full Speed Ahead, Inc.*, Case No. C08-1372-RSM, Dkt. No. 331 at 12  
2 (W.D. Wash. 2010), *aff'd*, 447 F. App'x 814 (9th Cir. 2011). To evaluate whether a subsidiary is  
3 properly considered an agent of its parent corporation, the court looks to whether the parent  
4 exercises "complete domination," the subsidiary is a shell corporation, or the parent uses its  
5 ownership interest to "command rather than merely cajole" the subsidiary. *Id.* (quoting *Japan*  
6 *Petroleum v. Ashland Oil, Inc.*, 456 F. Supp. 831, 845 (D.Del. 1978); *Esmark, Inc. v. Nat'l Labor*  
7 *Relations Bd.*, 887 F.2d 739, 757 (7th Cir. 1989)). Alternatively, a parent may be liable under a  
8 direct participant theory if a plaintiff establishes the "parent's specific direction or authorization  
9 of the manner in which an activity is undertaken and [the] foreseeability" of any resultant injury.  
10 *Forsythe v. Clark USA, Inc.*, 224 Ill.2d 274, 289 (Ill. 2007) (reviewing and synthesizing state and  
11 federal case law analyzing when a parent corporation may be held liable for the actions of its  
12 subsidiary).

13 Plaintiff's allegation that Defendant's subsidiaries sold Defendant's products and  
14 services, standing alone, is insufficient to establish a plausible claim that Defendant's  
15 subsidiaries were thus acting as Defendant's agents during the events at issue. *See, e.g.*,  
16 *whiteCryption Corp. v. Arxan Techs., Inc.*, 2016 WL 3275944, slip op. at 1, 11 (N.D. Cal. 2016)  
17 (concluding that plaintiff's factual allegations as to subsidiary's status as parent corporation's  
18 agent, including subsidiary's sale of parent corporation's software technology and use of internet  
19 addresses with parent corporation's name, and the substantial roles of the parent corporation's  
20 officers in the subsidiary's business dealings, were insufficient to establish plausible claim of  
21 agency liability); (*see* Dkt. No. 28 at 19, 22, 24). Plaintiff has not otherwise asserted specific  
22 factual allegations that Defendant exercised "complete domination" over its subsidiaries, that  
23 Defendant's subsidiaries are shell corporations, that Defendant used its ownership interest to  
24 "command" its subsidiaries, or that Defendant directed or authorized the subsidiaries' actions in  
25 this case. *See Japan Petroleum*, 456 F. Supp. at 845; *Esmark, Inc.*, 887 F.2d at 757; *Forsythe*,  
26 224 Ill.2d at 289; (*see generally* Dkt. No. 28). Plaintiff's response to Defendant's motion does

1 not direct the Court to additional relevant factual allegations in the second amended complaint or  
2 provide legal authority demonstrating that the mere sale of a parent corporation's goods or  
3 services establishes a subsidiary as an agent of the parent corporation. (*See* Dkt. No. 35 at 2, 5–  
4 6.) Therefore, Plaintiff has not established a plausible claim that Defendant may be held liable  
5 for its subsidiaries' actions based on its subsidiaries' sale of Defendant's goods or services.

6                   2. Vicarious Liability – Actual Authority

7           Plaintiff asserts that Defendant conferred actual authority on its subsidiaries Microsoft  
8 Arabia, Microsoft Ireland, and Microsoft Germany and thus is vicariously liable for those  
9 entities' relevant actions, citing a cooperation agreement between Plaintiff and Microsoft Arabia  
10 which provides that Microsoft Arabia “represents Global Microsoft . . . in” Saudi Arabia. (*See*  
11 Dkt. Nos. 28 at 19–20, 22–25; 28-12 at 2.)

12           A principal may be liable for its agent's actions when the agent has either express or  
13 implied actual authority to act on the principal's behalf. *See Salyers v. Metro. Life Ins. Co.*, 871  
14 F.3d 934, 940 (9th Cir. 2017) (citing Restatement (Third) of Agency § 2 intro. Note (2006));  
15 *accord King v. Riveland*, 886 P.2d 160, 165 (Wash. 1994). “Express actual authority derives  
16 from an act specifically mentioned to be done in a written or oral communication,” whereas  
17 “[i]mplied actual authority comes from a general statement of what the agent is supposed to do;  
18 an agent is said to have the implied authority to do acts consistent with that direction.” *Salyers*,  
19 871 F.3d at 940 (quoting *NLRB v. District Council of Iron Workers of the State of California and*  
20 *Vicinity*, 124 F.3d 1094, 1098 (9th Cir. 1997)). Both forms of actual authority depend “on the  
21 objective manifestations made by the principal to the agent.” *Revitalization Partners, LLC v.*  
22 *Equinix, Inc.*, Case No. C16-1367-JLR, Dkt. No. 22 at 9 (W.D. Wash. 2017).

23           The document cited by Plaintiff contains, at best, Microsoft Arabia's representation that it  
24 was acting on Defendant's behalf. (*See* Dkt. Nos. 28 at 20, 23–25; 28-12 at 2.) It does not  
25 evidence an objective manifestation by Defendant to Microsoft Arabia regarding Microsoft  
26 Arabia's express or implied actual authority to act on Defendant's behalf. (*See* Dkt. No. 28-12.)

1 The second amended complaint does not allege any other objective manifestation made by  
2 Defendant to its subsidiaries sufficient to confer expressed or implied actual authority upon  
3 them. (*See generally* Dkt. No. 28.) And Plaintiff's response to Defendant's motion again fails to  
4 direct the Court to relevant factual allegations or legal authority. (*See* Dkt. No. 35 at 5.)  
5 Therefore, Plaintiff has not established a plausible claim that Defendant conferred actual  
6 authority upon its subsidiaries and thus may be held liable for the actions underlying Plaintiff's  
7 claims.

8 3. Vicarious Liability – Apparent Authority

9 Plaintiff asserts that Defendant conferred apparent authority upon its subsidiaries and  
10 thus is vicariously liable for those subsidiaries' relevant actions. (*See* Dkt. No. 28 at 20, 23, 25.)  
11 Plaintiff specifically asserts that Defendant affirmatively held out its subsidiaries as having  
12 authority to act on its behalf, citing Defendant's subsidiaries' use of "@microsoft.com" email  
13 addresses during their interactions with Plaintiff. (*See id.*)

14 "Apparent authority depends on the principal's objective manifestations of the agent's  
15 authority to the third party claiming apparent authority." *Revitalization Partners, LLC*, Case No.  
16 C16-1367-JLR, Dkt. No. 22 at 9; *accord D.L.S. v. Maybin*, 121 P.3d 1210, 1214 (Wash. Ct. App.  
17 2005). "Such manifestations much cause the third party to actually or subjectively believe that  
18 the agent has the authority to act for the principal, and that belief must be objectively  
19 reasonable." *Revitalization Partners, LLC*, Case No. C16-1367-JLR, Dkt. No. 22 at 9. An  
20 individual or entity's use of a corporation's email address is insufficient to convey apparent  
21 authority upon that individual or entity. *See, e.g., whiteCrypton Corp.*, 2016 WL 3275944, slip  
22 op. at 1, 11; *Spam Arrest, LLC v. Replacements, Ltd.*, Case No. C12-0481-RAJ, Dkt. No. 91-1 at  
23 17 (W.D. Wash. 2013) ("As a matter of law, Sentient Jet's authorization for its employees to use  
24 its email addresses did not vest them with actual or apparent authority to enter the Sender  
25 Agreement.").

26 Defendant's subsidiaries' use of "@microsoft.com" email addresses is insufficient to

1 establish that they were acting with apparent authority during their interactions with Plaintiff. *See*  
2 *whiteCryption Corp.*, 2016 WL 3275944, slip op. at 111; *Spam Arrest, LLC*, Case No. C12-0481-  
3 RAJ, slip op. at 9. And while Plaintiff conclusively asserts that “Defendant affirmatively held  
4 Defendant’s agents out as having authority to act on the Defendant’s behalf” during the  
5 negotiations between Defendant’s subsidiaries and Plaintiff, (*see* Dkt. No. 28 at 20, 23, 25), the  
6 second amended complaint does not set forth factual allegations supporting this assertion, (*see*  
7 *id.* at 3–19). Similarly, the many exhibits attached to Plaintiff’s second amended complaint do  
8 not evidence an objective manifestation by Defendant to Plaintiff regarding the authority of  
9 Defendant’s subsidiaries to act on Defendant’s behalf. (*See* Dkt. Nos. 28-1–28-47.) Again,  
10 Plaintiff’s response to Defendant’s motion does not direct the Court to relevant factual  
11 allegations in the second amended complaint or applicable legal authority. (*See* Dkt. No. 35 at  
12 6.)<sup>2</sup> Therefore, Plaintiff has not established a plausible claim that Defendant conferred apparent  
13 authority upon its subsidiaries and thus may be held liable for the actions underlying Plaintiff’s  
14 claims.<sup>3</sup>

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16 <sup>2</sup> In its response, Plaintiff argues that “[t]hese email addresses were issued by Defendant,  
17 to its subsidiaries, in an attempt to bestow an expectation of authority that derived from  
18 Defendant. That expectation of authority assuaged CSI into contacting [sic] with Defendant’s  
19 subsidiaries. CSI would have no reason to uncover this deception given their previous working  
20 relationships and interactions.” (Dkt. No. 35 at 6.)

21 <sup>3</sup> Plaintiff’s second amended complaint periodically alleges that Defendant’s subsidiaries  
22 acted as its agents in the events underlying Plaintiff’s claims. (*See, e.g.*, Dkt. No. 28 at 7)  
23 (“Microsoft Arabia, acting as agent for Defendant, signed a Memorandum of Understanding . . .  
24 with TVTC.”). But as discussed above, Plaintiff has not established a plausible claim that  
25 Defendant’s subsidiaries were in fact acting as Defendant’s agents during the events at issue. *See*  
26 *supra* Sections II.B.1–II.B.3. Plaintiff’s conclusory allegations are insufficient to establish a  
plausible claim as to an agency relationship between Defendant and its subsidiaries such that  
Defendant may be held liable for its subsidiaries’ actions. *See Iqbal*, 556 U.S. at 678; *Balistreri*,  
901 F.2d at 699.

In its response to Defendant’s motion to dismiss, Plaintiff argues that it has pleaded that  
Defendant maintained a policy of only selling volume licenses to governmental or academic  
institutions and that either Defendant or its agents listed TVTC as the customer to circumvent  
this policy, thereby causing Plaintiff’s damages. (*See* Dkt. No. 35 at 6; *see also* Dkt. No. 28 at 6.)  
But the volume license agreement summary cited by Plaintiff was sent by Microsoft Ireland

1 In sum, while Plaintiff describes Defendant’s arguments as an “attempt to deflect and  
2 shirk its responsibility through a highly sophisticated legal shell game whereby harmed parties  
3 act in good faith, only to never see the shells turned over,” (*see* Dkt. No. 35 at 1), the second  
4 amended complaint does not plausibly establish Defendant’s participation in or liability for the  
5 underlying actions at issue in this case. *See Iqbal*, 556 U.S. at 678. Therefore, Plaintiff has failed  
6 to state a claim upon which relief may be granted. *See* Fed. R. Civ. P. 12(b)(6).<sup>4</sup>

### 7 C. Jurisdictional Discovery

8 In its response to Defendant’s motion to dismiss, Plaintiff asks the Court for leave to  
9 conduct jurisdictional discovery. (*See* Dkt. No. 35 at 2, 10.) Generally, jurisdictional discovery  
10 may be granted where a defendant challenges the court’s personal jurisdiction over it. *See Puget*  
11 *Sound Surgical Ctr., P.S. v. Aetna Life Ins. Co.*, Case No. C17-1190-JLR, Dkt. No. 61 at 17  
12 (W.D. Wash. 2018). Accordingly, jurisdictional discovery is appropriate where “pertinent facts  
13 bearing on the question of jurisdiction are controverted or whether a more satisfactory showing  
14 of the facts is necessary.” *Butcher’s Union Local No. 498, United Food and Commercial*  
15 *Workers v. SDC Inv., Inc.*, 788 F.2d 535, 540 (9th Cir. 1986) (quoting *Data Disc, Inc. v. Systems*  
16 *Technology Associates, Inc.*, 557 F.2d 1280, 1285 n.1 (9th Cir. 1977)).

17 Defendant has not challenged the Court’s jurisdiction. (*See* Dkt. No. 38 at 12.) And

18  
19 Operations Limited, not Defendant. (*See* Dkt. No. 28-11 at 2–3.) Plaintiff’s bare assertion that it  
20 was Defendant who listed TVTC as the customer on the volume license summary despite the  
21 document being sent by Microsoft Ireland, and who did so to circumvent Defendant’s own  
22 policy and boost its earnings, is insufficient to establish a plausible claim against Defendant. *See*  
23 *Iqbal*, 556 U.S. at 678; *Steckman*, 143 F.3d at 1295–96. And to the extent that Plaintiff is  
24 attempting to argue that Defendant exercised sufficient control over its subsidiaries to render  
them its agents, the existence of a general policy set by a parent corporation is insufficient to  
establish an agency relationship between it and its subsidiaries. *See Bestfoods*, 524 U.S. at 72;  
*whiteCryption Corp.*, 2015 WL 3799585, slip op. at 2; *Bowoto v. Chevron Texaco Corp.*, 312 F.  
Supp. 2d 1229, 1235 (N.D. Cal. 2004).

25 <sup>4</sup> As Plaintiff has failed to establish that Defendant is a proper party to this action, the  
26 Court does not address whether Plaintiff’s claims of fraud, breach of contract, or violation of the  
Washington Consumer Protection Act are subject to dismissal under Rule 12(b)(6). (*See* Dkt. No.  
28 at 19–26.)



1 Plaintiff's request for leave to conduct jurisdictional discovery is bereft of any citation to the  
2 record or substantive argument establishing either that facts pertinent to the question of  
3 jurisdiction are controverted or that a more satisfactory showing of jurisdictional facts is  
4 necessary. *See Butcher's Union Local No. 498*, 788 F.2d at 540; (Dkt. No. 35 at 2, 10).  
5 Therefore, Plaintiff's request for leave to conduct jurisdictional discovery is DENIED.

6 **III. CONCLUSION**

7 For the foregoing reasons, Defendant's motion to dismiss Plaintiff's second amended  
8 complaint (Dkt. No. 32) is GRANTED. Because Plaintiff's claims against Defendant have now  
9 been asserted three times and been dismissed twice for failure to state a claim upon which relief  
10 may be granted as to Defendant, and because Plaintiff has not demonstrated that it will be able to  
11 cure the deficiencies identified by the Court if granted further opportunities to amend its claims,  
12 Plaintiff's claims are DISMISSED with prejudice as to Defendant Microsoft Corporation. *Callan*  
13 *v. Motricity Inc.*, Case No. C11-1340-TSZ, Dkt. No. 124 at 16 (W.D. Wash. 2013), *aff'd sub*  
14 *nom. Mosco v. Motricity, Inc.*, 649 F. App'x 526 (9th Cir. 2016).

15 DATED this 24th day of February 2020.

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A handwritten signature in black ink, reading "John C. Coughenour", written over a horizontal line.

John C. Coughenour  
UNITED STATES DISTRICT JUDGE